

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent of: Yoshimura et al.	Docket No.: PF613TD1
Patent No.: 7,070,975	Issued: July 4, 2006
Application No.: 10/726,148	Filed: December 2, 2003
Confirmation No.: 4267	Art Unit: 1652
For: Protein and DNA Thereof	Examiner: M. Monshipouri

**APPLICATION FOR PATENT TERM ADJUSTMENT
UNDER 37 C.F.R. § 1.705(d)**

MS Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Patentees hereby request reconsideration of the Patent Term Adjustment (PTA) indicated on the face of U.S. Patent No. 7,070,975 (the '975 Patent). Patentees believe the correct PTA is 333 days, not 263 days as indicated on the face of the '975 Patent. This application is made pursuant to 37 C.F.R. § 1.705(d) because the '975 Patent should have indicated a revised PTA. This application is being filed within two months of the date of issue of the '975 Patent (as September 4, 2006 fell on a Federal holiday, *see* 35 U.S.C. § 21), and therefore is timely made. The requirements of 37 C.F.R. § 1.705(d) have been satisfied, as the fee required by 37 C.F.R. § 1.705(b)(1) has been paid herewith, and the requirements of 37 C.F.R. § 1.705(b)(2) are satisfied by the following Statement of Facts.

STATEMENT OF FACTS

Eligibility for PTA

1. The '975 Patent is eligible for patent term adjustment under 35 U.S.C. § 154 because it was filed on December 2, 2003.

Correct PTA, Bases Therefor, and Relevant Dates

2. The correct PTA for the '975 Patent under 35 U.S.C. § 154(b) is 333 days as explained in more detail below.

3. As correctly noted in the Patent Term Adjustment History in the PTO's PAIR system, the '975 Patent is entitled to 345 days of PTA under 35 U.S.C. § 154(b)(1)(A)(iv) and 37 C.F.R. § 1.702(a)(4), as the issue fee was paid on March 24, 2005, but the '975 Patent was not issued until July 4, 2006. Thus, the period noted in 37 C.F.R. § 1.703(a)(6) between the day after the date that is four months after the issue fee was paid and all outstanding requirements were satisfied (July 25, 2005) and the date the '510 Patent was issued (July 4, 2006) is 345 days.

Terminal Disclaimer

4. The instant application is not subject to a terminal disclaimer.

Efforts to Conclude Processing or Examination

5. As correctly noted in the Patent Term Adjustment History in the PTO's PAIR system, Patentees requested an extension of time in which to file a response to an office action from July 15, 2004 to July 27, 2004, and thus a reduction in PTA of 12 days is appropriate under 37 C.F.R. § 1.704(b).

6. However, the Patent Term Adjustment History in the PTO's PAIR system incorrectly lists an information disclosure statement being filed on March 24, 2005 with the transmittal of the issue fee. No such paper was filed by Patentees, nor is any such paper shown in the PTO's Image File Wrapper. The only information disclosure statements filed in the prosecution of the application that issued as the '975 Patent were filed on December 2, 2003, and May 26, 2004. From the PAIR Transaction History and Image File Wrapper, it appears that in May 2005, the printing contractor noticed that the December 2, 2003 IDS had not been signed (*see* IFW Printer Query form entry on May 11, 2005). In response, the Examiner signed the IDS on May 26, 2005; the signed copy of this IDS was mailed to Patentees on June 1, 2006 and the Examiner responded to the Printer Query on the same date (*see* IFW entries dated June 1, 2005). For some reason, when this

IDS was entered into the PAIR Transaction History in this process, it was improperly given the date of March 24, 2005. Accordingly, the reduction of PTA of 70 days shown in the Patent Term Adjustment History is incorrect, and should be removed. After the removal of this incorrect reduction, the correct PTA will be 333 days (345 days minus 12 days).

7. Other than the circumstances noted above, there were no circumstances that could reasonably be construed as a failure of Patentees to engage in reasonable efforts to conclude processing or examination of the '975 Patent within the meaning of § 1.704.

CONCLUSION

Patentees respectfully request that the PTA for the '975 Patent be reconsidered in light of the facts and circumstances described above. In particular, Patentees maintain that the '975 Patent is entitled to 333 days of PTA.

If any further information is required, please contact the undersigned at the number listed below. Please charge any additional fees due in connection with the filing of this paper, or credit any overpayment, to Deposit Account No. 08-3425.

Dated: September 5, 2006

Respectfully submitted,

By 

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